



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-1087]

RIN 1625-AA00

Safety Zone; Upper Mississippi River, Mile 389.4 to 403.1

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Upper Mississippi River, from Mile 389.4 to 403.1, extending the entire width of the river located on the Iowa and Illinois border. This safety zone is needed to protect bridge span movement operations on the Upper Mississippi River. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Upper Mississippi River or a designated representative.

DATES: Effective Date: this rule is effective in the CFR from [INSERT DATE OF PUBLICATION] until 7 p.m. CST on December 21, 2011. This rule is effective with actual

notice for purposes of enforcement beginning 7 a.m. on November 22, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-1087 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2011-1087 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Chief Petty Officer Ryan Christensen, Sector Upper Mississippi River Response Department at telephone (314) 269-2721, e-mail Ryan.D.Christensen@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not using the NPRM process. The Coast Guard received notice that bridge span movement operations would take place on November 22, 2011. This short notice did not allow for the time needed to publish a NPRM and provide for a comment period. The Coast Guard determined that a safety zone is necessary to protect vessels and mariners from the hazards associated with transporting the bridge spans. Delaying this rule and the necessary protections by publishing a NPRM would be impracticable and would unnecessarily delay the bridge span operations. This rule is needed to protect vessels and mariners from the safety hazards associated with transporting bridge spans in

the vicinity of Mile 389.4 to 403.1 on the Upper Mississippi River.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. The Coast Guard received notice that the bridge spans would be transported and impact navigation on November 22, 2011. This short notice did not allow for a 30 day notice period. The Coast Guard determined that a safety zone is necessary to protect vessels and mariners from the hazards associated with transporting the bridge spans. Delaying the rule's effective date would be impracticable because immediate action is needed to protect vessels and mariners from the safety hazards associated with transporting bridge spans in the vicinity of Mile 389.4 to 403.1 on the Upper Mississippi River.

Basis and Purpose

On November 22, 2011, Ames Construction will be transporting bridge span between Mile 389.4 to 403.1 on the Upper Mississippi River located on the Iowa and Illinois border. This event presents safety hazards to the navigation of vessels between Mile 389.4 to 403.1, extending the entire width of the river.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone for all waters of the Upper Mississippi River, Mile 389.4 to 403.1, extending the entire width of the river and located on the Iowa and Illinois border. Entry into this zone is prohibited to all vessels and persons except participants and those persons and vessels specifically authorized by the Captain of the Port Upper Mississippi River. This rule is effective from 7:00 a.m. on November 22, 2011 through 7:00 p.m. CST on December 21, 2011. The currently scheduled date for bridge span operations and enforcement of this rule is November 22, 2011. Dates of bridge span operations may change within the November 22, 2011 through December 21, 2011 effective period for this rule. The Captain of the Port Upper Mississippi River will inform the public through broadcast notice to mariners of all safety zone requirements, changes, and enforcement periods.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review:

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 - 612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to

transit the Upper Mississippi River on the Iowa and Illinois border between Mile 389.4 to 403.1, from 7:00 a.m. on November 22, 2011 through 7:00 p.m. CST on December 21, 2011. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will only be in effect for a limited period of time.

If you are a small business entity and are significantly affected by this regulation, please contact Chief Petty Officer Ryan Christensen, Sector Upper Mississippi River at (314) 269-2721.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each

agency's responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 - 3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the

aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the

Instruction. This rule establishes a temporary safety zone.

An environmental analysis checklist and a categorical exclusion determination are required for this rule, and will be provided as indicated in the ADDRESSES Section.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

Part 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary § 165.T08-1087 is added to read as follows:

§ 165.T08-1087 Safety Zone; Upper Mississippi River, Mile 389.4 to 403.1.

(a) Location. The following area is a safety zone: all waters of the Upper Mississippi River, Mile 389.4 to

403.1, extending the entire width of the waterway and located on the Iowa and Illinois border.

(b) Effective date. This rule is effective from 7 a.m. on November 22, 2011 through 7 p.m. CST on December 21, 2011.

(c) Periods of Enforcement. This rule will be enforced during bridge span operations scheduled for 7 a.m. through 12:00 noon CST on November 22, 2011. Additional bridge span operations occur within the period from November 22, 2011 through December 21, 2011. The Captain of the Port Upper Mississippi River will inform the public of the enforcement periods, planned dates of bridge span operations and any safety zone changes through broadcast notice to mariners.

(d) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Upper Mississippi River or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Upper Mississippi River or a designated representative. The Captain of the Port Upper Mississippi River representative may be contacted at (314) 269-2332.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Upper Mississippi River or their designated representative. Designated Captain of the Port representatives include United States Coast Guard commissioned, warrant, and petty officers.

Dated: November 22, 2011

B. L. Black,

Captain, U.S. Coast Guard

Captain of the Port Upper Mississippi River

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